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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,437	02/09/2001	Alfred A. Barney	01997-286001	6675
26161	7590	03/23/2004	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110				JAGAN, MIRELLYS
ART UNIT		PAPER NUMBER		
		2859		

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/779,437	BARNEY ET AL.	
	Examiner Mirellys Jagan	Art Unit 2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 March 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-48 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-48 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 9, 15-17, 22, 24-26, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,606,163 to Huston et al [hereinafter Huston].

Referring to claims 1-3 and 9, Huston discloses a method of sensing temperature comprising the steps of:

providing a temperature sensor comprising a matrix formed of a ZnS semiconductor nanocrystal in an inorganic glass binder (17) on the surface of a substrate (19);

irradiating a portion of the sensor with an excitation wavelength of light from a light source;

detecting the emission intensity of light from the sensor using a detector; and

determining the temperature of the surface directly from the emission intensity of light from the sensor. Huston teaches that semiconductor nanocrystals are useful as temperature sensors (see figures 1, 2, and 5; column 4, lines 5-12 and 27-49; column 5, lines 8-21; and column 5, line 58-column 6, line 47).

Referring to claims 15-17 and 22, Huston discloses a temperature sensor comprising: a matrix formed of a ZnS semiconductor nanocrystal in an inorganic glass binder (17);

a light source arranged to illuminate the nanocrystal; and  
a detector arranged to detect the intensity of light emitted from the nanocrystal.

Referring to claims 24-26 and 30, Huston discloses a temperature sensing layer covering a surface of a substrate (19), the layer comprising:

a matrix formed of a ZnS semiconductor nanocrystal in an inorganic glass binder (17).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 10-14, 18, 23, 27, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huston in view of U.S. Patent 6,322,901 to Bawendi et al [hereinafter Bawendi].

Huston discloses a method, a sensor, and a layer having all of the limitations of claims 4, 10-14, 18, 23, 27, and 31, as stated above in paragraph 2, except for the nanocrystal being overcoated with a second semiconductor nanocrystal, the nanocrystal being a member of a monodisperse core population that emits light in a spectral range of no greater than 75nm at FWHM, exhibits less than a 15% rms deviation in diameter with a particle size in the range of about 15-125 Å, and photoluminesces with a quantum efficiency of at least 10%.

Bawendi discloses a luminescent element comprising a semiconductor nanocrystal that includes a semiconductor material, such as CdS, CdSe, or CdTe surrounded by an overcoat of a second semiconductor material, such as ZnS. The semiconductor nanocrystal is a member of a monodisperse core population that emits light in a spectral range of no greater than 75nm at FWHM, exhibits less than a 15% rms deviation in diameter with a particle size in the range of about 15-125 Å, and photoluminesces with a quantum efficiency of at least 10%. Bawendi teaches that the semiconductor nanocrystal is a highly luminescent material when irradiated with light (see figures 2 and 5; column 2, line 47-column 3, line 9, and column 10, line 64-column 11, line 3).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method, the sensor, and the layer disclosed by Huston by replacing the semiconductor nanocrystal with the semiconductor nanocrystal disclosed by Bawendi in order to provide a more luminescent nanocrystal when determining temperatures.

5. Claims 1-7, 9-20, 22-28, 30-36, and 38-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,341,676 to Gouterman et al [hereinafter Gouterman] in view of Huston and Bawendi.

Referring to claims 1-7, 9-14, and 48, Gouterman discloses a method of sensing temperature comprising the steps of:

providing a temperature sensor comprising a matrix formed of a fluorescent material (B) in an inorganic polymer binder on the surface of a substrate;

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irradiating a portion of the sensor with an excitation wavelength of light from a light source;

detecting the emission intensity of light from the sensor using a detector; and determining the temperature of the surface directly from the emission intensity of light from the sensor (see column 7, lines 12-25 and 48-53; column 8, lines 28-30, 39-41; column 8, line 61-column 9, line 1; column 9, lines 42-49; column 9, line 60-column 10, line 6; and column 11, lines 7-22).

Gouberman does not disclose the fluorescent material being a group II-VI, III-V, or IV semiconductor nanocrystal from the claimed group of nanocrystals; the nanocrystal having a second semiconductor nanocrystal overcoated thereon; the nanocrystal including an organic or organometallic overlayer including a metal alkoxide as a hydrolyzable moiety to make the nanocrystal soluble in the binder; the nanocrystal being a member of a substantially monodisperse core population that emits light in a spectral range of no greater than 75nm at FWHM, exhibits less than a 15% rms deviation in diameter with a particle size in the range of about 15-125 Å, and photoluminesces with a quantum efficiency of at least 10%.

Huston discloses a temperature sensor comprising a semiconductor nanocrystal. Huston teaches that semiconductor nanocrystals are luminescent when irradiated with light and are useful for sensing temperature.

Bawendi discloses a fluorescent material comprising a semiconductor nanocrystal that is luminescent when irradiated with an excitation wavelength of light. The semiconductor nanocrystal includes a semiconductor, such as CdS, CdSe, or CdTe surrounded by an overcoat of a second semiconductor material. A coat of an organic or inorganic overlayer surrounds the

nanocrystal, the overlayer having a polymerizable moiety that has an affinity for the nanocrystal surface and a chosen binder such as an inorganic or organic polymer. The overlayer is used to convey solubility in order to disperse the coated nanocrystal into the chosen binder. The semiconductor nanocrystal is a member of a monodisperse core population that emits light in a spectral range of no greater than 75nm at FWHM, exhibits less than a 15% rms deviation in diameter with a particle size in the range of about 15-125 Å, and photoluminesces with a quantum efficiency of at least 10%. Bawendi teaches that the semiconductor nanocrystal is a highly luminescent material when irradiated with light (column 2, line 47-column 3, line 9, and column 10, line 64-column 11, line 3).

Referring to claims 1 and 48, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method disclosed by Gouterman by replacing the fluorescent material with an inorganic polymer-soluble fluorescent material, as taught by Bawendi, in order to provide a fluorescent material that is highly luminescent when irradiated with light when sensing temperatures, and since Huston teaches that luminescent semiconductor nanocrystals are useful as temperature sensors.

Referring to claims 15-20, 22, and 23, Gouterman discloses a temperature sensor comprising:

- a matrix formed of a fluorescent material (B) in an inorganic polymer binder;
- a light source arranged to illuminate the material; and
- a detector arranged to detect the intensity of light emitted from the material.

Gouterman does not disclose the fluorescent material being a group II-VI, III-V, or IV semiconductor nanocrystal from the claimed group of nanocrystals; the nanocrystal having a second semiconductor nanocrystal overcoated thereon; the nanocrystal including a metal alkoxide as an organic or organometallic overlayer to make the nanocrystal soluble in the binder; and the nanocrystal being a member of a substantially monodisperse core population.

Huston discloses a temperature sensor comprising a semiconductor nanocrystal. Huston teaches that semiconductor nanocrystals are luminescent when irradiated with light and are useful for sensing temperature.

Bawendi discloses a fluorescent material comprising a semiconductor nanocrystal that is luminescent when irradiated with an excitation wavelength of light. The semiconductor nanocrystal includes a semiconductor, such as CdS, CdSe, or CdTe surrounded by an overcoat of a second semiconductor material. A coat of an organic or inorganic overlayer surrounds the nanocrystal, the overlayer having a polymerizable moiety that has an affinity for the nanocrystal surface and a chosen binder such as an inorganic or organic polymer. The overlayer is used to convey solubility in order to disperse the coated nanocrystal into the chosen binder. The semiconductor nanocrystal is a member of a monodisperse core population. Bawendi teaches that the semiconductor nanocrystal is a highly luminescent material when irradiated with light (column 2, line 47-column 3, line 9, and column 10, line 64-column 11, line 3).

Referring to claim 15, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sensor disclosed by Gouterman by replacing the fluorescent material with an inorganic polymer-soluble fluorescent material, as taught by Bawendi, in order to provide a fluorescent material that is highly luminescent when irradiated

with light when sensing temperatures, and since Huston teaches that luminescent semiconductor nanocrystals are useful as temperature sensors.

Referring to claims 24-28, 30, and 31, Gouterman discloses a temperature-sensing layer comprising a matrix formed of a fluorescent material (B) in an inorganic polymer binder.

Gouterman does not disclose the fluorescent material being a group II-VI, III-V, or IV semiconductor nanocrystal from the claimed group of nanocrystals; the nanocrystal having a second semiconductor nanocrystal overcoated thereon; the nanocrystal including an organic or organometallic overlayer to make the nanocrystal soluble in the binder; and the nanocrystal being a member of a substantially monodisperse core population.

Huston discloses a temperature sensor comprising a semiconductor nanocrystal. Huston teaches that semiconductor nanocrystals are luminescent when irradiated with light and are useful for sensing temperature.

Bawendi discloses a fluorescent material comprising a semiconductor nanocrystal that is luminescent when irradiated with an excitation wavelength of light. The semiconductor nanocrystal includes a semiconductor, such as CdS, CdSe, or CdTe surrounded by an overcoat of a second semiconductor material. A coat of an organic or inorganic overlayer surrounds the nanocrystal, the overlayer being chosen so that it has an affinity for the nanocrystal surface and a chosen binder such as an inorganic or organic polymer. The overlayer is used to convey solubility in order to disperse the coated nanocrystal into the chosen binder. The semiconductor nanocrystal is a member of a monodisperse core population. Bawendi teaches that the

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semiconductor nanocrystal is a highly luminescent material when irradiated with light (column 2, line 47-column 3, line 9, and column 10, line 64-column 11, line 3).

Referring to claim 24, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the layer disclosed by Gouberman by replacing the fluorescent material with an inorganic polymer-soluble fluorescent material, as taught by Bawendi, in order to provide a fluorescent material that is highly luminescent when irradiated with light when sensing temperatures, and since Huston teaches that luminescent semiconductor nanocrystals are useful as temperature sensors.

Referring to claims 32-36 and 38-42, Gouberman discloses a temperature-sensing paint comprising a fluorescent material (B) in an inorganic polymer binder and a deposition solvent including an alcohol. The paint has a pressure-sensitive composition (A) including a platinum porphyrin that emits light dependent upon oxygen pressure when irradiated by an excitation wavelength of light.

Gouberman does not disclose the fluorescent material being a group II-VI, III-V, or IV semiconductor nanocrystal from the claimed group of nanocrystals; the nanocrystal emitting light independent of oxygen pressure and dependent upon temperature upon irradiation by an excitation wavelength of light; and the nanocrystal being a member of a substantially monodisperse core population.

Huston discloses a temperature sensor comprising a semiconductor nanocrystal. Huston teaches that semiconductor nanocrystals are luminescent when irradiated with light and are useful for sensing temperature.

Bawendi discloses a fluorescent material comprising a semiconductor nanocrystal that is luminescent when irradiated with an excitation wavelength of light. The semiconductor nanocrystal includes a semiconductor, such as CdS, CdSe, or CdTe surrounded by an overcoat of a second semiconductor material. A coat of an organic or inorganic overlayer surrounds the nanocrystal, the overlayer being chosen so that it has an affinity for the nanocrystal surface and a chosen binder such as an inorganic or organic polymer. The overlayer is used to convey solubility in order to disperse the coated nanocrystal into the chosen binder. The semiconductor nanocrystal is a member of a monodisperse core population. Bawendi teaches that the semiconductor nanocrystal is a highly luminescent material when irradiated with light (column 2, line 47-column 3, line 9, and column 10, line 64-column 11, line 3).

Referring to claim 32, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the paint disclosed by Gouterman by replacing the fluorescent material with an inorganic polymer-soluble fluorescent material, as taught by Bawendi, in order to provide a fluorescent material that is highly luminescent when irradiated with light when sensing temperatures, and since Huston teaches that luminescent semiconductor nanocrystals are useful as temperature sensors.

Referring to claim 33, the semiconductor nanocrystal of Bawendi inherently emits light independent of oxygen pressure.

Referring to claims 43 and 44, Gouterman discloses a method of manufacturing a temperature-sensing paint by combining a fluorescent material (B), a binder, and a deposition solvent to form the paint.

Gouberman does not disclose the fluorescent material being a semiconductor nanocrystal that is prepared by contacting an M donor, M being Cd, Zn, Mg, Hg, Al, Ga, In, or Tl, with an X donor, X being O, S, Se, Te, N, P, As, or Sb, to form a mixture, and heating the mixture to form the nanocrystal.

Huston discloses a temperature sensor comprising a semiconductor nanocrystal. Huston teaches that semiconductor nanocrystals are luminescent when irradiated with light and are useful for sensing temperature.

Bawendi discloses a fluorescent material comprising a semiconductor nanocrystal that is luminescent when irradiated with an excitation wavelength of light. The semiconductor nanocrystal includes a semiconductor, such as CdSe. The semiconductor nanocrystal is prepared by contacting a Cd donor with an Se donor to form a mixture, and heating the mixture to form the nanocrystal. Bawendi teaches that the semiconductor nanocrystal is a highly luminescent material when irradiated with light (column 2, line 47-column 3, line 9; column 6, lines 5-25; column 8, line 66-column 9, line 67; and column 10, line 64-column 11, line 3).

Referring to claim 43, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method disclosed by Gouberman by replacing the fluorescent material with a fluorescent material prepared as taught by Bawendi, in order to provide a fluorescent material that is highly luminescent when irradiated with light when sensing temperatures, and since Huston teaches that luminescent semiconductor nanocrystals are useful for sensing temperature.

Referring to claims 45-47, Gouterman discloses a method of manufacturing a temperature sensor by depositing a temperature-sensing paint on a surface of a substrate, the paint comprising a fluorescent material (B) in a binder and a deposition solvent.

Gouterman does not disclose the fluorescent material being a group II-VI, III-V, or IV semiconductor nanocrystal from the claimed group of nanocrystals.

Huston discloses a temperature sensor comprising a semiconductor nanocrystal. Huston teaches that semiconductor nanocrystals are luminescent when irradiated with light and are useful for sensing temperature.

Bawendi discloses a fluorescent material comprising a semiconductor nanocrystal that is luminescent when irradiated with an excitation wavelength of light. The semiconductor nanocrystal includes a semiconductor, such as CdS, CdSe, or CdTe surrounded by an overcoat of a second semiconductor material. A coat of an organic or inorganic overlayer surrounds the nanocrystal, the overlayer being chosen so that it has an affinity for the nanocrystal surface and a chosen binder such as an inorganic or organic polymer. The overlayer is used to convey solubility in order to disperse the coated nanocrystal into the chosen binder. Bawendi teaches that the semiconductor nanocrystal is a highly luminescent material when irradiated with light (column 2, line 47-column 3, line 9, and column 10, line 64-column 11, line 3).

Referring to claim 45, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method disclosed by Gouterman by replacing the fluorescent material with a fluorescent material as taught by Bawendi, in order to provide a fluorescent material that is highly luminescent when irradiated with light when sensing

temperatures, and since Huston teaches that luminescent semiconductor nanocrystals are useful as temperature sensors.

6. Claims 8, 21, 29, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gouterman, Huston, and Bawendi, as applied to claims 1-7, 9-20, 22-28, 30-36, 38-48 above, and further in view of the prior art disclosed by applicant on page 8, lines 28 and 29 of the specification [hereinafter Prior Art].

Gouterman, Huston, and Bawendi disclose a method, sensor, layer, and paint having all of the limitations of claims 8, 21, 29, and 37, as stated above in paragraph 5, except for the binder including an organic polymer.

The Prior Art teaches that it is known to use either an organic or an inorganic polymer as a binder in paint.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method, sensor, layer, and paint disclosed by Gouterman, Huston, and Bawendi by replacing the inorganic polymer with an organic polymer, since the Prior Art teaches that these polymers are alternate and equivalent polymers known to be used in paint.

#### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-48 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247. The examiner can normally be reached on Monday-Thursday from 8AM to 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ  
March 17, 2004



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